Statements by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, March 6, 2017

1. COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR

   A. RECOURSE TO ARTICLE 21.5 OF THE DSU BY COLOMBIA: REQUEST FOR THE ESTABLISHMENT OF A PANEL (WT/DS461/17)

- The United States regrets that a second meeting was necessary in order to move forward with this proceeding. It is in both parties' interest, in order to reach a final resolution of this dispute, to move efficiently to resolve the fundamental issue of compliance.

- With regard to the issue of consultations, we note that there is no requirement to request consultations under Article 4 of the DSU as a condition for requesting the establishment of a compliance panel pursuant to Article 21.5 of the DSU – a point that the Appellate Body has made in two reports.[1]

- Consultations are not referred to in Article 21.5, and the parties have already consulted on the initial matter giving rise to the situation under Article 21.5. Indeed, we cannot see how Article 4 of the DSU could apply to an instance in which – as in this instance – it is the Member concerned who is requesting a compliance panel to confirm that Member's compliance.

- As the compliance panel will be established at this meeting of the DSB, and an arbitration proceeding has been commenced under Article 22.6 of the DSU, the parties and the individuals comprising the panel and the arbitrator should consider how to efficiently structure the two proceedings.

- In doing so, whether the measure at issue achieves compliance can and should be taken into account in determining, in the Article 22.6 proceeding, the level of nullification and

[1] *See Mexico – HFCS (Article 21.5) (AB)*, para. 65 ("[W]e conclude that even if the general obligations in the DSU regarding prior consultations were applicable in proceedings under Article 21.5 of the DSU – a matter which we do not decide – non-compliance with those obligations would not have the effect of depriving a panel of its authority to deal with and dispose of the matter. It follows that, in this case, the Panel was not required to consider, on its own motion, whether the lack of consultations deprived it of its authority to assess the consistency of the redetermination with the Anti-Dumping Agreement.") (emphasis added); *US – Continued Suspension (AB)*, para. 340 ("Thus, it is important to distinguish between these consensual means of dispute resolution, which are always at the Members' disposal, and adjudication through panel proceedings, which are compulsory. It is in this sense that Article 21.5 is cast in obligatory language. In this dispute, it is clear that a mutually acceptable solution was not reached and the European Communities decided to resort to adjudication. In addition, the parties to this dispute were unable to agree on an arbitration procedure pursuant to Article 25 of the DSU. The issue before us, therefore, is which procedure must be followed when parties do not avail themselves of the consensual and alternative means of dispute resolution provided in the DSU, and the dispute must proceed to the adjudication phase.").

impairment. Specifically, any level of suspension of concessions determined in that proceeding must be equivalent to the current level of nullification and impairment.

- The United States considers that the issue of whether Colombia's actions remove the WTO-inconsistency found by the DSB could be addressed in the context of the Article 22.6 proceeding or in a proceeding under Article 21.5 of the DSU.

- Finally, we recall that the WTO dispute settlement system was designed to support the prompt resolution of disputes and must fulfill that function if the system is to function efficiently, as the Members intended. We regret that these rules are, at times, being used to impede, rather than further, resolution of disputes among Members.